

BANKING DIVISION[187]

Notice of Intended Action

Proposing rule making related to application procedures and providing an opportunity for public comment

The Iowa Division of Banking (IDOB) hereby proposes to amend Chapter 2, “Application Procedures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 524.213.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 524.

Purpose and Summary

The proposed amendments reflect the Iowa Division of Banking’s compliance with Iowa Code section 17A.7(2), which states that, as of July 1, 2012, “over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency’s rules [and t]he goal of the review is the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible with statute or its own rules or those of other agencies.” The proposed amendments to Chapter 2 are intended to eliminate outdated requirements.

The IDOB proposes to eliminate existing requirements stating that the Superintendent must determine that a reasonable share price is being paid in a cash out merger or reverse stock split, because the IDOB is able to fulfill its statutory duty to protect the interests of shareholders without engaging in the detailed analysis of these transactions currently required by rule. The IDOB proposes to rescind current rules regarding the licensing of debt management companies and is separately promulgating a new Chapter 20 (ARC 3954C, IAB 8/15/18) applicable to debt management companies. The IDOB proposes to eliminate a rule that imposes a notice and publication requirement in association with applications for which no statutory notice and publication requirement exists. The IDOB has concluded that this type of notice requirement is rarely invoked and adds unnecessary burden to the application process. The IDOB proposes to add rule language to clarify that an applicant may not declare the entire contents of an application confidential. Finally, the IDOB proposes several corrections to update references to statutes and certain federal guidance documents.

Fiscal Impact

No current fees are being changed, and no new fees are being added; therefore, the IDOB has concluded that the proposed amendments will not have a fiscal impact to the State of Iowa.

Jobs Impact

Because no existing authorized activities are being restricted, no new activities are being authorized, no existing fees are being increased, and no new fees are being added, the IDOB has concluded that the proposed amendments will have no impact on jobs in Iowa.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the IDOB for a waiver of the discretionary provisions, if any, pursuant to 187—Chapter 12.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the IDOB no later than 4:30 p.m. on September 4, 2018. Comments should be directed to:

Zak Hingst
Iowa Division of Banking
200 East Grand Avenue, Suite 300
Des Moines, Iowa 50309-1827
Phone: 515.281.4014
Email: zak.hingst@idob.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

- ITEM 1. Rescind and reserve subrule **2.3(6)**.
- ITEM 2. Amend rule **187—2.5(17A,524)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code ~~sections~~ section 524.312 and 524.1202.
- ITEM 3. Rescind and reserve subrule **2.7(3)**.
- ITEM 4. Rescind and reserve subrule **2.7(4)**.
- ITEM 5. Rescind and reserve rule **187—2.9(17A)**.
- ITEM 6. Amend rule 187—2.12(17A,524) as follows:

187—2.12(17A,524) Supplemental application procedures.

2.12(1) Scope. ~~Subrules 2.12(2) to 2.12(14) contain~~ This rule contains procedures by which the superintendent may reach informed decisions with respect to those applications for which the superintendent shall deem a public hearing necessary. These procedures provide a method by which all persons interested in the subject matter of such applications or other cases in which a public hearing is deemed necessary may present their views. Nothing contained herein shall be construed to prevent interested persons from presenting their views in a more informal manner when deemed appropriate by the superintendent or to prevent the superintendent from conducting such other investigation as may be deemed appropriate.

2.12(2) Notice of filing of application. ~~Except in the case of proposed transactions where notice by publication is governed by statute, the applicant shall, within 15 days after the superintendent has notified the applicant in writing that an application has been accepted for processing, publish one time in a newspaper of general circulation in the community in which the applicant proposes to engage in business a notice containing the name of the applicant or applicants, the subject matter of the application, and the~~

date upon which the application was accepted for processing. Immediately thereafter, the applicant shall furnish the superintendent with proof of such publication. The superintendent may solicit, in whatever manner deemed appropriate, comments from banks which may be affected by or have an interest in the pending application.

2.12(3) 2.12(2) Public file. The public file in each case shall consist of the application with supporting data and supplementary information with the exception of material deemed by the superintendent to be confidential. In addition, the public file shall contain all data and information submitted by interested persons in favor of or in opposition to such application, excluding any material deemed by the superintendent to be confidential. The superintendent or the superintendent's designee shall not deem information confidential for purposes of the two immediately preceding sentences unless the person submitting the information requests that such information be deemed confidential. All factual information contained in any internal investigation report made by a bank examiner shall also be made a part of the public file, unless deemed confidential by the superintendent. The person submitting the application may not request that the entire application be deemed confidential.

a. and b. No change.

2.12(4) ~~Written comments and requests for an opportunity to be heard.~~ Within ten days after the notice of publication described in subrule 2.12(2), any interested person may submit to the superintendent written comments concerning the application or a written request for an opportunity to be heard before the superintendent or the superintendent's designee. The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the superintendent. In the absence of a request, the superintendent, when it is believed to be in the public interest, may order a hearing to be held.

2.12(5) 2.12(3) Place of hearing. Hearings granted by the superintendent shall be heard in the office of the superintendent. The superintendent, in any matter, reserves the right to conduct hearings at any location deemed to be appropriate.

2.12(6) 2.12(4) Date of hearing. An opportunity to be heard shall be given as soon as practicable after ordered.

2.12(7) 2.12(5) Notice of hearing. The notice given by the superintendent concerning the hearing shall set forth the subject matter of the application, the legal authority for such hearing, and the date, time, and place of the hearing. The notice shall be sent to the person or persons requesting the hearing, to the applicant and to other interested persons who have sent written comments to the superintendent.

2.12(8) 2.12(6) Attendance at hearing. Each person who wishes to be heard shall notify the superintendent within five days after the date of the notice described in subrule 2.12(7) 2.12(5) of their the person's intention to attend and shall submit the number and names of witnesses to be presented.

2.12(9) 2.12(7) Presiding officer. The presiding officer at the hearing shall be the superintendent or such other person as may be designated by the superintendent.

2.12(10) 2.12(8) Hearing rules. The applicant and each participant may make opening statements of a length within the discretion of the presiding officer. Such opening statements should concisely state what the participant intends to show. The applicant shall have the opportunity to present a statement first. Following the opening statements, the applicant shall present data and materials, oral or documentary. Following the applicant's presentation, the persons protesting the application shall present their data and materials, oral or documentary. The protesters may agree, with the approval of the presiding officer, to have one of their number make their presentation. Following the evidence of the applicant and the protester, the presiding officer may recognize other interested persons who may present their views with respect to the application under consideration. After all the above presentations have been concluded, the participants before the panel may make short and concise summary statements reviewing their position positions. The applicant shall present a concluding summary statement.

a. to c. No change.

d. A transcript of each proceeding shall be arranged for by the superintendent's office person or persons requesting the opportunity to be heard, with all expenses of such service, including the furnishing of one copy of the transcript to the superintendent, being borne by the person or persons requesting the

opportunity to be heard, except for hearings ordered by the superintendent's office on its own volition, in which case, the applicant will bear the expense of furnishing transcripts of the record.

e. The public file described in subrule ~~2.12(3)~~ 2.12(2) shall automatically be deemed a part of the record of these proceedings, as well as all evidence submitted and the transcript described in paragraph ~~"d" of this subrule.~~ 2.12(8) "d."

~~2.12(11)~~ 2.12(9) *Closing of the public file.* If requested by any participant, the public file shall remain open for five days following receipt of the transcript by the superintendent, during which time the applicant and protesters may submit additional written statements. A copy of any statement so submitted during this period of time shall also be sent simultaneously to the other persons represented at the hearing.

~~2.12(12)~~ *Reserved.*

~~2.12(13)~~ 2.12(10) *Decision.* The applicant and all persons so requesting in writing shall be notified of the final disposition of the application by the superintendent.

~~2.12(14)~~ 2.12(11) *Computation of time.* In computing any period of days provided for in this rule, the day of the event from which the period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this subrule, "legal holiday" means a day on which the office of the superintendent remains closed.

This rule is intended to implement Iowa Code sections 17A.3, 524.305, 524.312, 524.1201, 524.1303, and 524.1403.

ITEM 7. Rescind paragraph **2.16(2)"e."**

ITEM 8. Rescind and reserve subrule **2.17(3).**